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JAMES G. MAHER,

CLERK

Supreme Court of the United States.

OCTOBER TERM, 1920

No. 663.

DAVID M. GOODRICH,

Plaintiff in error.

v.

WILLIAM H. EDWARDS, United States Collector of Internal Revenue for the
Second District of the State of New York.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE BY PLAINTIFF IN ERROR.

LANGDON P. MARVIN,
Counsel for Plaintiff in error.



Supreme Court of the United States

OCTOBER TERM, 1920,

No. 663.

DAVID M. GOODRICH,
Plaintiff-in-error,

against

WILLIAM H. EDWARDS, United
States Collector of Internal
Revenue for the Second Dis-
trict of the State of New York.

Motion to
advance by
Plaintiff-
in-Error.

WRIT OF ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT
OF NEW YORK.

Now comes David M. Goodrich, the plaintiff-in-error herein, and respectfully moves that the above entitled cause be advanced for early hearing during the present term of this Court.

The writ of error herein presents to the Court for review a final judgment rendered on the 17th day of December, 1920, sustaining a demurrer to a complaint upon the ground of insufficiency. The action was brought to recover moneys paid under

protest upon the ground that they had been illegally exacted by the defendant-in-error under color of a tax unlawfully imposed upon the plaintiff-in-error.

This is the cause referred to in the brief of the plaintiff-in-error, and on the oral argument of his counsel, in *Eldorado Coal & Mining Co. v. Mager*, No. 609, which was argued immediately following *Merchants Loan & Trust Co. v. Smietanka*, No. 608, on the 12th day of January, 1921. The case of *Goodrich v. Edwards*, No. 663, presents questions similar to those involved in the two cases mentioned, viz.:

1. The constitutionality of so much of the Income Tax Law of 1916 as has been construed to tax as income capital increment realized upon the conversion of capital investments into cash after the passage of said Act; and
2. The correctness of the construction given to said Act of Congress.

These questions, however, are presented in the present case with respect to the sale of investments of an individual investor, while in *Merchants' Loan & Trust Co. v. Smietanka*, No. 608, the questions arose with respect to the sale of investments held by a trustee, and in *Eldorado Coal & Mining Co. v. Mager*, No. 609, the questions were presented with respect to the sale of the property of a corporation in the process of winding up its business.

The three cases, therefore, whilst involving somewhat different transactions, complete a cycle of typical cases presenting to the court these questions from the several different points of view. It had been hoped to argue the present case at the same time as the two other cases men-

tioned, but since that became impracticable, it is suggested that the argument of the present case might well be advanced for an early hearing.

The present case further involves two additional and far-reaching questions not involved in the other two cases, viz.:

3. Whether the proceeds derived from the sale of property acquired by gift or bequest are taxable as income; and

4. Whether, where property has been acquired for investment prior to the 1st day of March, 1913, and sold while the Income Tax Act of 1916 was in force at an actual loss to the investor, the difference between the market value of the property on the 1st day of March, 1913, (when less than the value at the time of acquisition) and the price realized upon the sale, represents income and is taxable as such.

It is respectfully submitted that it is in the public interest that these important questions should also be authoritatively determined and settled at the earliest convenience of the court.

As to the first two points mentioned above, the courts of first instance have arrived at conflicting results. The District Court for the District of Connecticut has held the statute to be unconstitutional in the respect involved herein in the case of *Brewster v. Walsh*, decided on the 16th day of December, 1920 (copies of the opinion of Judge Thomas in that action having been submitted to the court on the argument of *Eldorado Coal & Mining Co. v. Mager*, No. 609), and rulings to the contrary were made in the case at bar and by the District Court of the United States for the Northern District of Illinois in the other two cases above mentioned.

WHEREFORE, the plaintiff-in-error respectfully prays this Honorable Court to advance the above entitled cause for early hearing during the present term.

All of which, as in duty bound, is respectfully submitted for the consideration and action of the court.

Notice of this application has been served on the Department of Justice, and the Solicitor General has authorized the statement that he does not object to this motion.

January 24, 1921.

LANGDON P. MARVIN,
Counsel for plaintiff-in-error.

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OCTOBER TERM, 1920.

No. 663.

DAVID M. GOODRICH,

Plaintiff-in-Error,

vs.

WILLIAM H. EDWARDS, UNITED STATES COLLECTOR OF
INTERNAL REVENUE FOR THE SECOND DISTRICT OF
THE STATE OF NEW YORK.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

**PETITION FOR REHEARING IN BEHALF OF
PLAINTIFF-IN-ERROR.**

LANGDON P. MARVIN,
HENRY M. WARD,

Of Counsel for Plaintiff-in-Error.
